

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,  
Plaintiff,

v.

MOTOROLA INC., et al.,  
Defendants.

No. C10-1823-JLR

MICROSOFT'S MOTION FOR FINAL  
JUDGMENT ON ITS BREACH OF  
CONTRACT CLAIM PURSUANT TO  
RULE 54(b)

MOTOROLA MOBILITY, LLC., et al.,  
Plaintiffs,

v.

MICROSOFT CORPORATION,  
Defendant.

**NOTED FOR:  
FRIDAY, OCTOBER 11, 2013**

MICROSOFT'S MOTION FOR FINAL  
JUDGMENT PURSUANT TO RULE 54(b)  
(C10-1823-JLR)

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1 For the reasons set out below, Microsoft respectfully moves for entry of final judgment  
 2 on its breach of contract claim pursuant to Federal Rule of Civil Procedure 54(b). A proposed  
 3 order is attached.

#### 4 **I. PROCEDURAL HISTORY**

5 Microsoft filed suit alleging breach of contract and other claims in this Court on  
 6 November 9, 2010. On February 18, 2011, a separate patent infringement action filed by  
 7 Motorola against Microsoft in the Western District of Wisconsin (“the 343 Patent Case”) was  
 8 transferred to this Court, and on May 31, 2011 this Court consolidated the two cases. The  
 9 Court explicitly found “that the essential facts are not so intertwined and logically connected  
 10 that considerations of judicial economy and fairness dictate that the issues be resolved in one  
 11 lawsuit,” but that consolidation was nonetheless appropriate due to interests of judicial  
 12 economy. (Dkt. No. 66 at 11.) Following a summary judgment ruling holding that Motorola  
 13 had entered into contracts with the IEEE and ITU which were enforceable by Microsoft as a  
 14 third-party beneficiary, this Court, pursuant to agreement of the parties, conducted a bench trial  
 15 during November 2012 to determine RAND royalty rates for Motorola’s H.264 and 802.11  
 16 standard-essential patent portfolios and issued its Findings of Fact and Conclusions of Law in  
 17 April 2013. The parties then tried Microsoft’s breach of contract claim to a jury between  
 18 August 26 and September 4, 2013, and on September 4 the jury returned a verdict for  
 19 Microsoft and awarded damages.

#### 20 **II. LEGAL STANDARD**

21 Rule 54(b) permits a district court to enter judgment on “fewer than all” claims or as to  
 22 fewer than all parties where there is “no just reason for delay.” Fed.R.Civ.P. 54(b); *SEC v.*  
 23 *Platforms Wireless Intern. Co.*, 617 F.3d 1072, 1084 (9th Cir. 2010). A Rule 54(b) judgment  
 24 is a final appealable judgment for purposes of 28 U.S.C. § 1291. *Id.* In determining whether  
 25 to enter judgment on fewer than all claims, courts engage in a “pragmatic approach with focus  
 26

on severability and efficient judicial administration.” *Id.* (quotation marks omitted). Entry of judgment under Rule 54(b) “is proper if it will aid expeditious decision of the case.” *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797 (9th Cir. 1991) (quotation marks omitted). Certification of “fewer than all” claims under Rule 54(b) is appropriate even where there is factual overlap with remaining claims when “the case is complex and there is an important or controlling legal issue that cuts across (and cuts out or at least curtails) a number of claims.” *U.S. Fidelity and Guar. Co. v. Lee Investments LLC*, 641 F.3d 1126, 1140–41 (9th Cir. 2011), quoting *Wood v. GCC Bend, LLC*, 422 F.3d 873, 880–82 (9th Cir. 2005).

### III. ARGUMENT

#### A. Severability And Efficient Judicial Administration Strongly Favor Entry Of Judgment On Microsoft’s Breach Of Contract Claim.

The jury verdict for Microsoft has resolved Microsoft’s breach of contract claim. The jury found Motorola liable for breach of contract (*see* Dkt. No. 53, Amended Complaint at Prayer for Relief A), and awarded damages (*id.* at Prayer for Relief B). The Court’s April 19, 2013 order (Dkt. No. 673), October 10, 2012 order (Dkt. No. 465), and the jury instructions and record evidence collectively subsume Microsoft’s request for an accounting and pleas for declaratory relief (Dkt. No. 53, Amended Complaint at ¶ 9, Prayer for Relief F–H). In particular, Microsoft’s complaint sought a declaration “that Microsoft is entitled” to a license to Motorola’s 802.11 and H.264 standard essential patents on RAND terms. (*Id.* at Prayer for Relief G, H.) The jury was properly instructed that Motorola is obligated to grant licenses on RAND terms (Dkt. No. 908 at Instr. 15), and that Microsoft had not repudiated or forfeited any of its rights to such licenses (*id.* at Instr. 22). Given the posture of the case at this time, Microsoft’s right to a RAND license to Motorola’s standard-essential patents is firmly established.

Further, Microsoft has already offered to tender RAND royalties to Motorola at the Court-determined rates. (*See* Dkt. No. 701 & Ex. A.) Motorola, to date, has simply ignored

1 Microsoft's offer, presumably because it intends to challenge the Court-determined RAND  
 2 royalties on appeal. Notwithstanding Motorola's current refusal to accept Microsoft's tender  
 3 of RAND royalties, injunctive relief is not required in light of Motorola's commitment not to  
 4 pursue other action against Microsoft inconsistent with the worldwide RAND royalty  
 5 established in this case.<sup>1</sup> The remaining claims in this action stem from consolidation with the  
 6 343 Patent Case.<sup>2</sup> The issues presented by those claims are separable from the breach of  
 7 contract claim, and delaying appeal of the breach of contract claim in order to adjudicate them  
 8 would be contrary to efficient judicial administration. Accordingly, the Court may now enter  
 9 judgment under Rule 54(b).

10 **B. There Is No Just Reason For Delay.**

11 As the Court and the parties recognized in the agreed stay of the other issues in the  
 12 consolidated case and in two other patent infringement cases (*see* Dkt. Nos. 355, 360), the  
 13 central dispute between the parties is Microsoft's RAND breach of contract claim against  
 14 Motorola. Resolution of the RAND royalty issue on appeal may well make addressing at least  
 15 some remaining claims unnecessary, counseling in favor of entry of final judgment on the  
 16 breach of contract claim now, rather than delaying in order to adjudicate those other claims.  
 17 For the same reason that those claims were stayed in July 2012, entry of final judgment on the  
 18 breach of contract claim should not be delayed.

23 <sup>1</sup> In its submission concerning the current state of its German actions, Motorola committed to leave the stays of  
 24 those actions in place pending the appeal of this case. (Dkt. No. 924 at 2, 5.) Motorola has dismissed its  
 standard-essential patent claims in the ITC, and Motorola's companion case in the Western District of Wisconsin  
 related to its 802.11 standard-essential patents is stayed.

25 <sup>2</sup> Motorola's two declaratory judgment counterclaims in the contract case have also been finally resolved—the  
 26 first (repudiation) on summary judgment, and the second (no breach) by the jury's verdict.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Microsoft respectfully requests entry of final judgment on  
3 Microsoft's breach of contract claim pursuant to Fed. R. Civ. P. 54(b), and submits the  
4 attached proposed order.

5  
6 DATED this 25th day of September, 2013.

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**CERTIFICATE OF SERVICE**

I, Florine Fujita, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.

2. On this 25th day of September, 2013, I caused the preceding document to be served on counsel of record in the following manner:

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